IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 93/2002

Adv. Aires Rodrigues,
resident of T1-B30,
Ribandar Retreat,
Ribandar, Goa. .... Petitioner.

V/s

1. State of Goa,
by its Chief Secretary,
Secretariat, Panaji, Goa.

2. Mr. Avinash Vaze,
Chairman, Goa Public Service
Commission, EDC House,
Panaji, Goa.

3. Mr. Jagannath alias
Datta Anand Keny, Member,
Public Service Commission,
EDC House, Panaji, Goa.,

4. Goa Public Service Commission,
by its Secretary,
EDC House, Panaji, Goa. .... Respondents.

Mr. Aires Rodrigues, Advocate in person.

Mr. A.N.S. Nadkarni, Advocate General with Mr. V.P. Thaly Addl. Advocate General with Mr. P.A. Kamat, Addl. Govt. Advocate for respondent No.1.

Mr. M.S. Sonak, with Mr. C.S. D'Silva, Advocates for respondent No.2.

Mr. A.N.S. Nadkarni, Advocate General with Mr. H.D. Naik, Advocate for respondent No.4.

CORAM : S. RADHAKRISHNAN &
P.V. HARDAS, JJ.

DATE : SEPTEMBER 4, 2002

ORAL JUDGMENT : (Per HARDAS, J.)

Rule. Rule made returnable forthwith by consent

of parties. The respondents waive service. By consent taken up for final hearing.

2. This petition filed in public interest by a practising Lawyer of the State of Goa, takes exception to the Notification dated 23.5.2001, appointing the second respondent as Chairman of the Goa Public Service Commission (hereinafter, for the sake of brevity, referred to as 'GPSC') with effect from the date of his taking charge and the Notification dated 2.7.2001, appointing respondent No.3 as a Member of the GPSC from the date of his taking charge.

3. Public interest litigation by now has come to be accepted as an effective remedy to challenge public wrong or public injury caused by various acts or omissions of the Government or Public Authorities. The general norms regarding pleadings and locus standi are relaxed for public interest litigation because of the very nature of the challenge and the person who files public interest litigation. A public interest litigation should always be a bona fide vindication of grievance which should not be coloured by either mala fide or personal vendetta or for seeking personal gains.

4. The present petitioner who, as stated earlier, is a practising Advocate, has challenged the

appointment of respondents No.2 and 3 on the ground that respondents No.2 and 3 are not persons of integrity, honesty and are not eminent persons in their field. It is faintly urged that both the respondents are staunch supporters of the ruling Government in Goa. In respect of respondent No.3, apart from making bald assertions regarding not possessing integrity, honesty, etc., it is urged that his appointment is in violation of Article 316 of the Constitution of India. A scathing attack has been made by the petitioner in respect of the resume of the third respondent which is annexed to the affidavit of the third respondent.

5. In respect of the second respondent, it is stated that the second respondent, in a Departmental Inquiry, had been punished with penalty of compulsory retirement by Order dated 16.8.1999. On an appeal being preferred against this order by respondent No.2, the Appellate Authority, by its order dated 4.2.2000 had exonerated him. The petitioner has submitted that the exoneration was merely on technical grounds and while so exonerating him, the Appellate Authority in the last paragraph of its Order, held as follows:

> " The delinquent official has deposited by way of cheque the amounts which he has obtained towards the House Building Advance or portion thereof as has remained unpaid.

> In case the said cheque has not been encashed by the Corporation, and the same is valid, I order the Corporation to encash the same and adjust towards the loan account of the delinquent official. In case validity period of the cheque has expired, I direct the delinquent official to deposit the necessary amounts within 15 days from receipt of this Order."

6. Thus, relying on the observations of the Apex Court in the case of **Ashok Kumar Yadav and others v. State of Haryana and others**, (1985) 4 SCC 417 and particularly on the observations of the Apex Court at para 30, it is submitted before us that the respondents No.2 and 3 ought not to have been appointed as Chairman and Member of the GPSC, as they are not competent, honest and independent persons, whose integrity is extremely doubtful. A relief of issuance of a writ of quo-warranto in terms of prayer clause is prayed for along with a writ of mandamus for quashing appointments of respondents No. 2 and 3.

7. On notice being issued by this Court, the respondents have filed their affidavits. The affidavit of respondent No.3 discloses that respondent No.3 has served in various capacities in Bank of India. He had retired from the Bank as Deputy Chief Officer, Departmental Head of Public Relations Department. It is also stated in the affidavit that the respondent No.3 was posted in 1989-90 at the Bank's London Branch. The second respondent, in his affidavit has brought to fore

and has highlighted the reasons for initiation of the Departmental Proceedings. He has also given reasons as to why the amount of House Building Advance was not paid to the builder. These facts are not germane for deciding the controversy in the Petition, as these facts were placed before the Appellate Authority who has accepted them and exonerated respondent No.2. The petitioner had chosen not to file the full text of order of the Appellate Authority, but only a brief portion of the order was referred to in para 3 of the petition. The full text of the order of the Appellate Authority has been annexed by the respondents. A perusal of the Appellate Order would show that the Appellate Authority had not exonerated the respondent No.2 on mere technical grounds. In paragraph 20 of the order of the Appellate Authority, the Appellate Authority, has observed as under:

> " (20) From the file it is evident that after remarks of the Chief Development Officer dated 4.10.1999, there has been no serious follow up by the Corporation. The apparently closed issue is raked up after 8 years, only when the delinquent official makes certain statements against the Ex-Managing Director. The complaint from Nizari appears to have been procured by the ex-Managing Director, as the complaint itself states that the same is pursuant to the query raised by the ex-Managing Director. The ex-Managing Director does not depose as to what was the occasion for raising such a query. Nizari also is not examined during the course of inquiry. All these coupled

> with the defence evidence that complaint was procured by the ex-Managing Director for victimizing the delinquent official for having made representation dated 19.11.1997, does create serious doubt of motive of initiating the disciplinary proceedings."

8. In the factual matrix, therefore, the petitioner has urged before us that admittedly, the second respondent was proceeded against departmentally and the Inquiry Officer had found the second respondent guilty and had imposed a penalty of compulsory retirement. It is further urged before us by the petitioner that the Appellate Authority has exonerated the Second Respondent, but while exonerating the second respondent, the Appellate Authority has directed that the cheques deposited by the second respondent towards the repayment of the house building advance should be encashed by the Economic Development Corporation. The Appellate Authority has further observed that in case the validity of the cheques had expired, the Delinquent Official, meaning the respondent No.2, would deposit the necessary amount within 15 days from the receipt of the order. Relying upon the observations of the Appellate Authority, it is contended by the petitioner before us that the integrity of respondent No.2 is extremely doubtful and respondent No.2 ought not to have been appointed as a Chairman of the GPSC.

9. We will take up the case as is made out

against respondent No.2 at a later stage and we will examine whether the petitioner has been able to make out any case against respondent No.3 first to justify the exercise of the power of judicial review of the action of respondent No.1 in appointing respondents No.2 and 3. The petitioner did concede during the hearing that there was no material against respondent No.3. Apart from saying that the appointment of respondent No.3 is in direct violation of Article 316 of the Constitution of India, the petitioner has not been able to substantiate any ground challenging the appointment of the third respondent. Though in the petition at para 6 it is stated that the appointment of respondents No.2 and 3 as Chairman and the Member of the GPSC was a subject matter of a public outcry and also representation made by the Leader of Opposition, the petitioner was quick enough in submitting that the representation was in respect of the appointment of respondent No.2 and not as against respondent No.3. The only ground which is urged before us in respect of the appointment of respondent No.3 is that he cannot be classified as 'an eminent person' deserving to be appointed as a Member of the GPSC. According to the petitioner, respondent No.3 was concerned mostly in discharging his duties in the department of public relations. The submission of the petitioner is wholly misplaced. A perusal of the resume

respondent No.3 had a total experience of working in a Bank for 23 years and 11 months. Respondent No.3 has held various positions, including that of the Branch Manager and Officer Incharge, Foreign Exchange Cell. Suffice it to say that in the absence of any valid challenge, in a writ of quo warranto, the Court cannot go on a fishing expedition in trying to ascertain the respondents' requisite qualifications for being appointed. The appointment of respondent No.3 is, to a certain extent, challenged in a very casual manner. There is a total absence of material to even remotely suggest that respondent No.3 is of doubtful integrity. We cannot substitute our opinion on the mere ipse dixit of the petitioner. There is no yardstick to judge whether respondent No.3 is or is not suitable for holding the post to which he is appointed. The positions earlier held by respondent No.3 do not in any manner suggest that respondent No.3 is not qualified to hold the post. There is no material against respondent No.3 which would disentitle him to hold this post. The challenge to the appointment of respondent No.3, therefore, must fail.

10. Turning to the allegations which have been made against respondent No.2, it is to be noticed that though respondent No.2 was held guilty in departmental proceedings, the respondent No.2 was ultimately

exonerated by the Appellate Authority by a detailed and a reasoned order. The Appellate Authority has come to a conclusion that the respondent No.2 was victimized and the entire inquiry had been initiated because of a representation which had been filed by respondent No.2 complaining therein various nefarious activities which were being carried on in the department with the blessings of the then Managing Director. The petitioner is, therefore, not correct in urging before us that respondent No.2 has been exonerated on technical grounds. The Appellate Authority has given a clean chit to respondent No.2 and his exoneration wipes out any blemish or stigma in relation to his integrity which was existing because of the order of the Inquiry Officer. Respondent No.2, therefore, emerges unblemished after the order of the Appellate Authority. The Appellate Authority, in respect of the direction regarding deposit of amount, reproduced in para 3 of the petition, has clarified it in its order, which reads as under :

> " It is clarified that the order for reinstatement with all consequential benefits is not linked to the direction to deposit of amount and the Delinquent Official shall be reinstated with all consequential benefits forthwith."

Thus, the direction of the Appellate Authority to deposit the amount in no way casts a cloud on the integrity of

the second respondent. To do so would be drawing an inference from an order of an Authority which did not intend any inference to be drawn.

11. It is urged before us by the petitioner that though respondent No.2 was exonerated by the Appellate Authority, the fact remains that respondent No.2 was proceeded against departmentally and an officer who was proceeded against departmentally should not be considered to the highest office of the Chairman of GPSC. It is true that respondent No.2 was proceeded against departmentally. The fact that the departmental inquiry had been held against him, cannot be used as lever to disentitle respondent No.2 from being appointed to the highest office of the GPSC merely on that score. Respondent No.2 has been exonerated by the Appellate Authority and the reasons of the Appellate Authority cannot be lost sight of. The Appellate Authority has clearly held that respondent No.2 was victimised because of his complaints. The order of the Appellate Authority, therefore, has the effect of wiping the slate clean and no stigma can be attached to respondent No.2 because of the departmental action or inquiry that had been initiated against him.

12. Learned Advocate General, appearing on

behalf of the State has drawn our attention to the Judgment of the Apex Court in **Jai Shankar Prasad v. State of Bihar and others,** (1993) 2 SCC. 597. This Judgment is a complete answer to the challenge of the petitioner in respect of Article 316 of the Constitution of India.

13. Article 316 of the Constitution of India, reads as under :

> **" 316. Appointment and term of office of members. -** (1) The Chairman and other members of a Public Service Commission shall be appointed, in the case of the Union Commission or a Joint Commission, by the President, and in the case of a State Commission, by the Governor of the State;
>
> Provided that as nearly as may be one-half of the members of every Public Service Commission shall be persons who at the dates of their respective appointments have held office for at least ten years either under the Government of India or under the Government of a State, and in computing the said period of ten years any period before the commencement of this Constitution during which a person has held office under the Crown in India or under the Government of an Indian State shall be included.
>
> [(1A). If the office of the Chairman of the Commission becomes vacant or if any such Chairman is by reason of absence or for any other reason unable to perform the duties of his office, those duties shall, until some persons appointed under clause (1) to the vacant office has entered on the duties thereof or, as the case may be, until the Chairman has resumed his duties, be performed by such one of the other members of the Commission as the President, in the case of

the Union Commission or a Joint Commission, and the Governor of the State in the case of a State in the case of a State Commission, may appoint for the purpose.]

(2) A member of a Public Service Commission shall hold office for a term of six years from the date on which he enters upon his office or until he attains, in the case of the Union Commission, the age of sixty-five years, and in the case of a State Commission or a Joint Commission, the age of [sixty-two years , whichever is earlier:

Provided that -

(a) a member of a Public Service Commission may, by writing under his hand addressed, in the case of the Union Commission or a Joint Commission, to the President, and in the case of a State Commission, to the Governor of the State, resign office;

(b) a member of a Public Service Commission may be removed from his office in the manner provided in clause (1) or clause (3) of article 317.

(3) A person who holds office as a Member of a Public Service Commission shall, on the expiration of his term of office, be ineligible for a re-appointment to that office. "

The petitioner states that when respondents No.2 and 3 were appointed, the mandate of Article 316 of the Constitution had been fulfilled as Mr. P.A. Debras was the other Member of the GPSC. According to the petitioner, on retirement of Mr. Debras, the mandate of Article 316 is not fulfilled as neither the second respondent nor the third respondent can be said to have held the office for at least 10 years either under the

Government of India or under the Government of State. Countering this submission of the petitioner, the learned Advocate General has referred to **Jai Shankar Prasad's** case. The Apex Court, in paragraph 9 of the Judgment has held as under :

> " 9. It is apparent from these provisions that the Chairman and other members of the State Public Service Commission are appointed by the Governor of the State. The appointments are obviously made on the advice of the Council of Ministers of the State. The proviso to clause (1) of the Article requires that "as nearly as may be", one half of the members of the Commission shall be persons who on the dates of their respective appointments have held office for at least ten years either under the Government of India or under the Government of a State. For brevity's sake we may refer to this category of members as service members. The expression "as nearly as may be" itself suggests that the proportion of 50 % of the service members is not exact but approximate and is meant not to be mandatory but directory. The said proviso does not, in terms, say that in no case and at no point of time, the said proportion should either go above, or fall below 50 %. In the very nature of things, a strict adherence to the said direction is not practicable at any particular point of time. In the first instance, the superannuation age of the member of the Commission is 62 years and his total tenure as a member cannot exceed six years. He has to vacate his office either when his tenure comes to an end or when he attains the age of 62 years whichever is earlier. When the members are appointed, they are bound to differ in age, whether they belong to the service category or the non-service category. In the normal course, they would retire at different points of time. If it is insisted, as is done on behalf of the appellant, that the said requirement must be followed strictly at all

> times, it would be well nigh possible to do so. Every time a member, whether belonging to the service or the non-service category, retires, there should be available a suitable person from the same category to be appointed in his place. It is not always possible to make an advance list of persons of either category who are suitable for such appointments. Hence, the total strength of the Commission as well as the number from each of the categories, are bound to vary from time to time. At any given point of time, therefore, it may not be possible to maintain the proportion between the two categories strictly in accordance with the direction given in the Constitution. It appears that it is for this reason that the words "at least half" used in the proviso to Section 265(1) of the Government of India Act, 1935, corresponding to the present proviso to Article 316(1), have been substituted by the words "as nearly as may be one-half"."

14. The vacancy created by the retirement of Mr. Debras, in no way affects the validity of the composition of the present GPSC and it could not be said that the composition is in direct breach of Article 316 of the Constitution. During the course of arguments, learned Advocate General has produced before us the confidential file relating to the appointment of the incumbent in the vacancy created on retirement of Mr. Debras and on a perusal, we are satisfied that on such appointment being made, the mandate of Article 316 of the Constitution would be satisfied. In fact, the learned Advocate General did stress before us that the appointment of the incumbent in place of Mr.Debras would not be in breach of Article 316 of the Constitution.

15. We have given our careful and anxious consideration to the submissions advanced by the petitioner and the learned Counsel appearing on behalf of the respondents. Reckless allegations which cannot be substantiated on the basis of documents, should never be made in a Court of law, particularly by the petitioner who is not a novice to the law of pleadings and proof. In the present case, we are constrained to observe that though the appointments of respondent No.2 and 3 were made in May, 2001 and July 2001 respectively, a petition ostensibly in public interest seeking to challenge their appointments, came to be filed in this Court on 8.3.2002. Undisputedly, in a public interest litigation, the petitioner does derive certain publicity. In the present case, the contents of the petition appeared in the news-papers on the very next day of its lodging and even before the matter was placed before the Bench for passing appropriate orders. The contents of the petition appeared in the news papers even before the petition was formally registered in the Registry. A petitioner in a public interest litigation should not normally be a person who is seeking publicity of the fact of having filed a petition in the Court. Certain degree of publicity is attendant to the decision of such petition which normally challenges sensitive issues before the

Court. Filing of a public interest litigation cannot be used as a vehicle for gaining publicity. Be that as it may, the petitioner has assured us that he would, in future, not be privy to passing information to the press, regarding the contents of a petition yet to be registered. We accept the explanation of the petitioner and do not propose to dilate on this issue, any further.

16. Though the petitioner has taken exceptions against respondents, challenging the appointments of respondents No.2 and 3, we have reached to a conclusion that there is no substance at all in the challenge which is made against respondents No.2 and 3. The petition is founded on reckless allegations, which cannot be substantiated on the basis of record. Only an extract of the order of the Appellate Authority was reproduced in the petition, without annexing the full text of the order. The Courts cannot countenance any attempts to mislead the Court, much less in a public interest litigation. We have, therefore, no other alternative but to dismiss the petition and though we do not agree with the submission of learned Advocate General for imposing exemplary costs, we dismiss the petition awarding costs of Rs.5,000/- each to respondents No.2 and 3.

17. Writ Petition No. 93/2002 is dismissed, with costs. Rule is discharged.

S. RADHAKRISHNAN, J.

P.V. HARDAS, J.

ssm.